

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

SYNCPPOINT IMAGING, LLC,

Plaintiff,

vs.

NINTENDO OF AMERICA INC. et al.,

Defendants.

No. 2:15-cv-00247-JRG-RSP

[Jury Trial Demanded]

**Nintendo's Response to SyncPoint's "Notice of Lodging"**  
**(Dkt. # 181) Identifying Contradictions In SyncPoint's**  
**Position Regarding Its Contentions**

In its recently filed Notice of Lodging (Dkt. # 181), SyncPoint confirms that it is not relying on P.R. 3–1(g) to amend its infringement contentions. SyncPoint points to the cover pleading to its contentions, which generally reserved rights under the Patent Local Rules including P.R. 3–1(g), and confirms to the Court that its general reservation of rights was neither intended nor sufficient to invoke the protections of P.R. 3–1(g). (Dkt 181, p. 2.)

In light of SyncPoint’s express disavowal of P.R. 3–1(g), Nintendo wishes to provide the Court with the basis for Nintendo’s representation to the Court that SyncPoint had invoked P.R. 3–1(g). Specifically, the first page of SyncPoint’s claim charts provides:

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SYNCPOINT: P.R. 3-1 PRELIMINARY CLAIM CHART FOR U.S. PATENT 6,275,214

Throughout this exhibit, the elements of the various claims are identified with respect to several non-limiting exemplary accused products. The use of such non-limiting examples in these claim charts does not modify the list of Accused Instrumentalities now asserted, or later asserted throughout the action. Based on the information currently available to SyncPoint, the Accused Instrumentalities meet all of the claim limitations in the same or similar way as the exemplary products do. Additionally, on information and belief, certain limitations of the various claims can be satisfied by software running on the Accused Instrumentalities, or by components thereof. SyncPoint reserves the right to supplement these contentions as appropriate pursuant to P.R. 3-1(g) after Defendants (or third parties, if necessary) produce the relevant source code, firmware, and other confidential technical documents such as schematics.

Consistent with this reservation, throughout its briefing on Nintendo’s Motion for Protective Order (Dkt. # 124), SyncPoint argued that it was permitted to amend its contentions under P.R. 3–1(g) for up to thirty days after SyncPoint reviewed both Nintendo and PixArt’s source code. For instance, SyncPoint argued to this Court in its Sur-Reply to Nintendo’s Motion (Dkt # 135 at 3): “For the sake of efficiency and conservation of resources, SyncPoint should not be required to amend its infringement contentions more than once

pursuant to P.R. 3–1(g) until source code from all defendants regarding the Accused Products has been made available to its source code reviewers.”

Based on the above and similar representations, Nintendo believed that SyncPoint was relying on P.R. 3–1(g). But in light of SyncPoint’s current representations to the Court, it now appears that SyncPoint is no longer relying on that rule as a basis to amend its contentions.

As a result, to the extent SyncPoint decides to amend its contentions, it must file a motion for leave, and, at a minimum, show good cause and diligence to amend its infringement contentions in order to rely on source code or other materials that it now has had in its possession for many months. Nintendo will address those issues more specifically as they arise if and when SyncPoint files its motion for leave to amend.

Dated: November 9, 2015

Respectfully submitted,

By: /s/ Grant Kinsel  
Grant Kinsel

Grant Kinsel (lead attorney)  
CA Bar No. 172407  
Email: gkinsel@perkinscoie.com  
Kyle M. Amborn  
Wash. St. Bar No. 48340  
Email: kamborn@perkinscoie.com  
Kevin A. Zeck  
Wash. St. Bar No. 41689  
Email: kzeck@perkinscoie.com  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101  
Tel: 206.359.8000  
Fax: 206.359.9000

Ryan B. Hawkins  
Ca Bar No. 256146  
Email: rhawkins@perkinscoie.com  
PERKINS COIE LLP  
11988 El Camino Real, Suite 350  
San Diego, CA 92130  
Tel: 858.720.5700  
Fax: 858.720.5799

Clyde M. Siebman  
SIEBMAN, BURG, PHILIPS &  
SMITH, L.L.P.  
Federal Courthouse Square  
300 N. Travis Street  
Sherman, TX 75090  
Tel: 903.870.0070  
Fax: 903.870.0066  
Email: Siebman@siebman.com

Attorneys for NINTENDO CO., LTD.  
and NINTENDO OF AMERICA INC.

**CERTIFICATE OF SERVICE**

I certify that all counsel of record who are deemed to have consented to electronic service are being served this November 9, 2015 with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail.

*/s/ Grant Kinsel*

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Grant Kinsel